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U.S. Department
of Transportation
**Federal Highway
Administration**

January 28, 2004

Mr. Malcolm T. Kerley, P.E.
Chief Engineer for Program Development
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219

Dear Mr. Kerley:

This letter is in response to the two questions raised in your letter of October 30, 2003. Your first question requested confirmation of your interpretation of Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21) and the flexibility of this section to allow the states to decide the specific vehicles to be tolled as well as the amounts of the tolls. As indicated in our December 15, 2003 response, a copy of which is attached, Section 1216(b) allows the states the flexibility to decide who and how much to toll.

In addition, your second question asked whether Section 1216(b) allows VDOT to use toll revenue from Interstate Route 81 to enhance the rail capacity in the corridor if VDOT could show a reduction of trucks traveling on Route 81 as a result of the railroad improvements. We have researched this extensively and jointly with our Office of Infrastructure and Chief Counsel in our Washington Office. Our conclusion is that under TEA 21, Section 1216(b) Pilot Program toll revenue cannot be used to enhance rail capacity in the corridor.

We evaluated alternative possible interpretations of the statute and concluded that such use of the toll revenues is not allowed. Section 1216(b) is intended to reconstruct and rehabilitate only facilities on the Interstate System. Since the Interstate System, as defined and described in 23 U.S.C. 101(a)(13) and 103(c), does not include railroads, the use of toll revenue from the operation of I-81 to enhance a freight railroad is not a permissible use of toll revenue under 1216(b)(5). Furthermore, Section 1216(b) would require Virginia to use the toll revenue only on the particular facility being tolled. Both of these points are supported by legislative history (H. Rpt. 105-85 at 516), which provides that "any State wishing to participate in the pilot program must enter into an agreement with the Secretary to ensure that no toll revenues are diverted to another facility or purpose".

We explored alternative, innovative financing approaches that could be used to enhance rail capacity in the corridor. A Federal Railroad Administration program that is similar to FHWA's TIFIA program (i.e., the "Railroad Rehabilitation and Improvement Program" in 45 U.S.C. 821, et seq.) may be an option. If you are interested in learning more about this FRA innovative financing approach, we would be pleased to provide additional information.

Should you need additional information on this matter, please do not hesitate to contact Mr. Vince Mammano at (804) 775-3355.

Sincerely,

Roberto Fonseca-Martinez

cc: Dwight Horne
Don West
Edward Kussy
Michael Harkins
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